

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

WILLIAM J. FERNANDEZ DAVILA,
HEIDI I. RIVERA MANGUAL, AND
THEIR CONJUNGAL
PARTNERSHIP CONSTITUTED BY
THEM ON THEIR OWN BEHALF
AND IN REPRESENTATION OF
THEIR MINOR SON ROBERTO
FERNANDEZ RIVERA.

Plaintiffs

Vs.

MUNICIPALITY OF JUANA DIAZ;
MAPFRE-PRAICO

Defendants

CIVIL NUM. _____

RE:

DAMAGES

C O M P L A I N T

TO THE HONORABLE COURT:

Come now, Plaintiffs through their undersigned legal representation and very respectfully state, allege and pray as follows:

I. JURISDICTION AND VENUE

1.1 Pursuant to 28 U.S.C. Sec.1332, the Court has original jurisdiction in this matter by reason of the diversity of citizenship of the parties and because the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

1.2 In accordance with 28 U.S.C. Sec.1391 venue lies properly in the U.S. District Court for the District of Puerto Rico as it sits in the place where the accident occurred and thus the claim arose.

II. THE PARTIES

2.1 Plaintiffs, William J. Fernández Dávila and Heidi I. Rivera Mangual, are married to each other, both of legal age and residents of 3834 Woodthrush Dr. Kissimmee, Florida 34744, and appear in this action on their own behalf and also in representation of their minor son Roberto Fernández Rivera.

2.2 Co-defendant Municipality of Juana Díaz is a municipality of the Commonwealth of Puerto Rico and is the registered owner of a vehicle FORD, F-450 license plate MU-8065, which was involved in the accident set forth herein.

2.3 The Defendant MAPFRE-PRAICO is an insurance company located in San Juan, Puerto Rico that issued an insurance policy of public liability in favor of the Juana Díaz Municipality which covers the damages requested in the Complaint.

III. THE FACTS

3.1 On November 28, 2008, at approximately 12:10 p.m., minor Roberto Fernández Rivera, a six (6) years old boy, was standing with his grandmother and his siblings at the side of Road No. 510, Km. 2.1, in Juana Díaz, Puerto Rico, right in front of house number M-52. They were waiting for a halt in the traffic to cross said road from west to east, when the Ford F-450 owned by co-defendant Municipality of Juana Díaz, driven by its employee Norberto Matos Rosado, which was riding straight ahead on said Road 510 from North to South, suddenly came towards them and struck with its right rear end minor Roberto Fernández Rivera.

3.2 The above described accident was caused exclusively by the inexcusable temerary and negligent driving of codefendant Municipality of Juana Diaz's employee, Norberto Matos Rosado, who, oblivious to any concern for human life approached the pedestrian crossing where the minor, his grandmother and siblings were standing in

such a reckless manner that he invaded with the aforesaid truck the pedestrian lane impacting the boy Roberto Fernández Rivera.

3.3 Codefendant Municipality of Juana Díaz's employee Norberto Matos Rosado was solely responsible for the related accident, which resulted from the negligent acts and omissions he incurred in while driving the truck, including, *inter alia*, failure to slow down as he approached the pedestrian crossing, failure to halt in order to allow the boy and his relatives to cross the road, instead swerving into their path and invading the pedestrian crossing; all of which negligent acts and omissions, among others, constituted the proximate cause of Plaintiff's damages

3.4 Co-defendant Municipality of Juana Díaz is liable to the plaintiffs as it is the owner of the vehicle complained of herein, license plate #MU-8065, and is also the employer of the driver of the truck Norberto Matos Rosado, who at the moment of the accident was in performance of his job with the Municipality of Juana Díaz.

3.5. As a result of the accident complained of herein, minor Roberto Fernández Rivera suffered the following injuries and traumas:

- a. left depressed temporoparietal fracture;
- b. liver laceration grade 2;
- c. right humerus fracture;
- d. pelvic fracture;
- e. left femur fracture;
- f. bilateral tibia fracture;
- g. Post status mechanical ventilation;
- h. psychological trauma.

All these damages are estimated in an amount not less than **\$800,000.00**.

3.6 As a result of the negligent acts and/or omissions complained of herein plaintiffs have suffered immense pain, mental and moral anguish which are estimated in the amount of **\$200,000.00 each**.

3.7 Plaintiffs William Fernández and his wife Heidi Rivera both lost their jobs in order to take care of their son, who required constant assistant and medical appointments with specialists, physical therapies and the like. These damages are estimated in the amount of **\$100,000.00** for the Conjugal Partnership.

3.8 Plaintiffs demand trial by jury.

IV. PRAYER

WHEREFORE, plaintiff requests that the instant complaint be granted in all its parts and that the defendants be held liable to plaintiff and therefore he be entitled to recover from the defendants all damages above claimed, along with all legal costs of proceedings and reasonable attorneys' fees.

In San Juan, Puerto Rico this 23rd day of June 2009.

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